

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
SAM SHAW et al.,

Plaintiffs,

-against-

96 Civ. 4259 (JGK)

RIZZOLI INTERNATIONAL  
PUBLICATIONS, INC., et al.

Defendants.

RULE 56.1 STATEMENT  
OF MATERIAL FACTS

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RIZZOLI INTERNATIONAL  
PUBLICATIONS, INC., et. ano

Third Party Plaintiffs,

-against-

VALPA, SRL

Third Party Defendant.  
----- X

Pursuant to Local Rule 56.1, defendants Rizzoli International Publications, Inc. and RCS Libri & Grandi Opere SpA (collectively "Rizzoli") submit the following statement of material facts as to which there is no genuine issue to be tried.

1. Pool 4 Art World SRL ("Pool 4") created an exhibition of Marilyn Monroe photographs and memorabilia and obtained for use therein the photographs and other images which are the subject of this lawsuit. (Polito Aff. ¶4).

MMLLC (Shaw) 000605

2. Pool 4 contracted with RCS Libri & Grandi Opere SpA to publish *Marilyn Monroe, The Life. The Myth.* a catalogue of the exhibition (the "Rizzoli Catalogue"). (Polito Aff. Ex. A). This action seeks damages for copyright infringement and related claims arising out of publication in 1995 and 1996 in Italy and the United States of the Rizzoli Catalogue. (Polito Aff ¶2.)

3. Marilyn Monroe died in August, 1962. (Polito Aff. ¶5).

4. The photographs that are the subject of this lawsuit were created prior to Ms. Monroe's death. (*Id.*).

5. The following paragraphs numbered 6 to 59 list 95 photographs which are the subject of this lawsuit, indicating for each photograph the name of the plaintiff, the page of the Rizzoli Catalogue (Exhibit A) on which the photograph or photographs appear, the name of the periodical in which the photograph appears, and a publication date for the photograph prior to January 1, 1964 (the "Public Domain Photographs").

	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
	<u>Sam Shaw</u>			
6.	146-147	8	"Le Ore"	S. Shaw testified <sup>1</sup> that the photographs on pp. 146-147 and 149 of the Catalogue were published in 1954, the day after they were taken. (Shaw p.76, Ex. G).

<sup>1</sup> The relevant pages of the deposition of Sam Shaw are annexed to the affidavit of Antonio Polito as Exhibit G.

	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
7.	147	1	"Se"	The photograph was published on the cover of a magazine "Se" which states the publication date as October 1-7, 1954. See also, Shaw p. 76 Ex. G.
8.	147	1	"Cahiers du Cinema"	S. Shaw testified that the photographs on pp. 146-147 and 149 of the Catalogue were published in 1954, the day after they were taken. (Shaw p.76, Ex. G).
9.	148	1	"Paris-Match"	Annexed hereto, as Exhibit H, is a copy of the page on which the photograph appeared in an October, 1954 "Paris-Match" magazine, which was made from microfilm belonging to the New York Public Research Library at 42nd Street. The facts regarding the copying of this microfilm are contained in the affidavit of Kenneth Hicks, also attached as Ex. H.
10.	149	1	"Visioni"	The photograph was published on the cover of a magazine, "Visioni", which states the publication date as May 14, 1955. See also Shaw p. 76, Ex. G.
11.	184	3	"Le Ore"	The identical photographs were published in the "New York Post" on May 13, 1957. A copy of the relevant page is annexed as part of Exhibit H.

**Shirley de Dienes**

12.	25	1	"Family Circle"	The photograph was published on the cover of a magazine, "Family Circle", which states the publication date as April 26, 1946.
13.	25	1	"Votre Amie"	The photograph was published on the cover of a magazine "Votre Amie", which states the publication date as September 3, 1946.

	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
14.	26	1	"Wereld Kroniek"	Shirley de Dienes <sup>2</sup> testified that the photograph was published for the first time in 1949. De Dienes pp. 28-29, Ex. I.
15.	26	1	"Pageant"	The photograph was published on the cover of a magazine, "Pageant", which was published in June 1946, according to a book published by the plaintiff, Quon Editions, p. 110, entitled <i>Marilyn Monroe unCovers</i> . Copies of the relevant pages of the Quon Editions book are annexed hereto as Exhibit N.
16.	26	1	"Picture Post"	The photograph was published on the cover of a magazine, "Picture Post", which states the publication date as December 13, 1947.
17.	27	1	"Picture Post"	The photograph was published on the cover of a magazine, "Picture Post", which states the publication date as March 26, 1949.
18.	27	1	"Sunbathing Review"	The photograph was published on the cover of a magazine, "Sunbathing Review", which states the publication date as Fall 1958.
19.	28	1	"Noir Et Blanc"	The photograph was published on the cover of a magazine, "Noir et Blanc," which states the publication date as July 16, 1952.
20.	76	1	"Life"	De Dienes testified that the photograph was published in the April 7, 1952 "Life" magazine. (De Dienes, pp. 48-51, Ex. I).
21.	107	8	"Marilyn Monroe Pin-ups"	Copies of the cover page, Copyright page and the pages of the 1953 "Marilyn Monroe Pin-ups" magazine are annexed

<sup>2</sup> The relevant pages of the deposition of Shirley De Dienes are annexed to the Polito Affidavit as Exhibit I.

**Page From Rizzoli  
Catalogue, Polito Aff.  
Ex. A**

**Number of  
Photos**

**Name of Periodical**

**Evidence From Record Demonstrating  
Publication Date before January 1,  
1964**

hereto as part of Ex. I following the pages  
of De Dienes deposition.

- |     |     |   |                 |   |
|-----|-----|---|-----------------|---|
| 22. | 112 | 1 | [Advertisement] | De Dienes testified that the photograph was published for the first time in the 1940's (De Dienes pp. 48-51, Ex. I).  |
| 23. | 113 | 1 | [Advertisement] | De Dienes testified that the photograph was published for the first time in the 1940's. (De Dienes pp. 67-68, Exh. I)   |
| 24. | 118 | 2 | [Unknown]       | The photographs which are claimed to be protected by the copyright law were published in a magazine spread which was reproduced in the Rizzoli Catalogue. The captions accompanying the photographs refer to Ms. Monroe in the present tense and thus demonstrate that the magazine article and the photographs were published in her lifetime, and before January 1, 1964. |

**Milton Greene**

- |     |     |   |         |   |
|-----|-----|---|---------|---|
| 25. | 92  | 1 | "Mujer" | The photograph was published on the cover of a magazine, "Mujer," which states the publication date as February 1962. <i>See also</i> J. Greene <sup>3</sup> pp. 153-154 Ex. J. |
| 26. | 92  | 1 | "Se"    | The photograph was published on the cover of a magazine "Se", which states the publication date as October 18, 1957; <i>See also</i> J. Greene pp. 153-154, Ex. J.              |
| 27. | 108 | 1 | "Tempo" | The photograph was published on the cover of a magazine, "Tempo", which states the publication date as November 26, 1953.   |

<sup>3</sup> The relevant pages of the deposition of Joshua Greene, the son of Milton Greene, are annexed to the Polito Affidavit as Exhibit J.

**Exhibit G**

**MMLC (Shaw) 000610**

05/29/97 SHAW VS. RIZZOLI

SAM SHAW, 05/29/97

documentary come out, what year?

(24) A It's been shot, but it hasn't been released yet.

PAGE 74

(2) Q Do you know --

(3) A Momentarily.

(4) Q Is it going to be shown on United States television?

(6) A Yes.

(7) Q Or just on English television?

(8) A World television. BBC.

(9) Q But you don't have a date?

(10) A I think I gave them permission every place except China. Hong Kong, China, Kuwait.

(12) Q And you don't have a date yet when this is going to be shown?

(14) A No.

(15) Q Is it going to be in the near future?

(16) A Pakistan. I wouldn't allow them to use any of my pictures in those countries.

(18) Q Do you have the name and address--

(19) A Because they have excepted it.

(20) Q Do you have the name of the producer of this BBC documentary?

(22) A The producer was Elaine Shepherd. I don't know the exact address. BBCTV London. They have asked for other photos and there is a Mr. Levy and a David Knight.

PAGE 75

David Knight, isn't it?

(3) MS. MARCUS: Knight. They are the producers or marketers, whatever.

(5) Q Turning now to page 147, did you take all of the photographs on page 147?

(7) A Yes.

(8) Q Yes?

(9) A Yes. Plus I --

(10) Q Yes?

(11) A I had a book with *Cahiers du Cinema*.

(12) Q You had a book with *Cahiers du Cinema*? You

wrote a book for them?

(14) A Yes. A book of my photos.

(15) Q When --

(16) A On John Cassavetes.

(17) Q When did that come out?

(18) A About two years ago.

(19) THE WITNESS: Two years ago?

(20) MS. MARCUS: 1992.

(21) THE WITNESS: 92?

(22) MS. MARCUS: Yes.

(23) A 1992.

(24) Q Now, I also want to skip ahead to page 149, which looks like a similar photo to the ones

PAGE 76

on pages 146 and 147. So skipping ahead to 149, did you take this photo?

(4) A That was on the strip of my photographs, my sketches for the ad. I did the ad for the picture, for the logo of the picture. That's one of the photos in there.

(6) Q Were these photos of Marilyn Monroe that are on pages 146, 147 and 149 taken at or about the same time and place?

(11) A The same evening. 51st Street and Lexington Avenue.

(13) Q What was the date?

(14) A I haven't got the exact date.

(15) Q How long --

(16) A The next day it was in Life Magazine.

(17) Q How long --

(18) A Associated Press, worldwide.

(19) Q How long did it take you to take these photographs?

(21) A It could have been the evening of 1954 but it took about ten years before, during the same composition, I designed that composition.

(24) Q Are you saying you had Marilyn pose the way she is depicted in these photographs?

PAGE 77

(2) A Well, I didn't have her

pose.

(3) Q What do you mean by you designed it?

(4) A She did the scene.

(5) Q She did a scene in the movie "The Seven-Year Itch," right?

(7) A Yes.

(8) Q Did you design the scene?

(9) A Yes. I designed -- I laid out the composition, the design. I was assigned to find -- I was assigned by Billy Wilder, Charlie Feldman, producers, to come up with a logo for the picture. I knew that that would become the logo.

(12) Q So are you saying that you recommended that the skirt blowing scene be included in the movie?

(18) A No.

(19) Q Somebody else did?

(20) A The scene was in the script.

(21) Q You didn't write the script?

(22) A I didn't write the script but I selected that moment to do the logo.

(24) Q Were you hired by the producers to do still photography?

PAGE 78

(2) A Yes.

(3) Q For that --

(4) A Special, yes. Correct.

(5) Q Did the producers pay you for these photographs?

(7) A Yes. Paid me for the assignment. The overall assignment.

(9) Q At the end of the assignment when you finished the photographs, who retains the rights to the photographs, the producers or you?

(12) A No. I retained the rights. A special photographer, that's the tradition of the special photographer. I have the rights to the picture.

(15) Q What do you mean by a "special photographer"?

(17) A Well, there is studio photographers, that's automatically with the union

**Exhibit H**

**MMLLC (Shaw) 000612**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
SAM SHAW et al.,

Plaintiffs,

-against-

96 Civ. 4259 (JGK)

RIZZOLI INTERNATIONAL  
PUBLICATIONS, INC., et al.

Defendants.

AFFIDAVIT

\_\_\_\_\_  
RIZZOLI INTERNATIONAL  
PUBLICATIONS, INC., et. ano

Third Party Plaintiffs,

-against-

VALPA, SRL

Third Party Defendant.  
\_\_\_\_\_x

STATE OF NEW YORK    )  
                              ) ss.:  
COUNTY OF NEW YORK )

Kenneth A. Hicks, being duly sworn, deposes and says:

1. I am associated with the firm of Weisman Celler Spett & Modlin, P.C.  
attorneys for Rizzoli International Publications, Inc. and RCS Libri & Grande Opere  
SpA (collectively "Rizzoli").

2. On December 3, 1997, I went to the New York Public Research Library on  
42nd Street. I obtained the microfilm for the "Paris-Match" magazine for the time  
period which includes October 1954 and made a copy from the microfilm of the page

MMLLC (Shaw) 000613

which is annexed hereto and which corresponds to the photograph reproduced for the  
Rizzoli Catalogue at page 148.

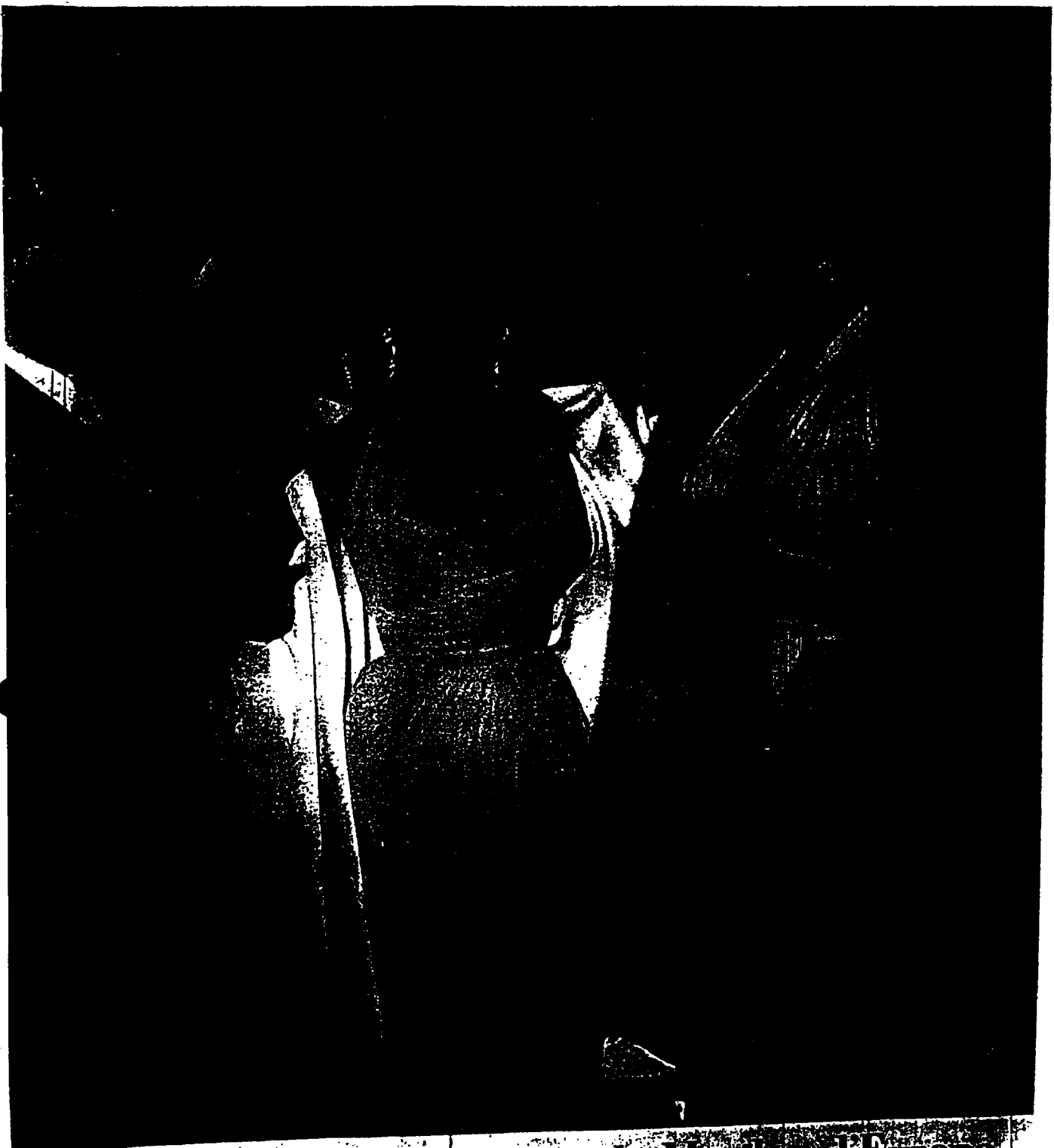
  
Kenneth A. Hicks

Sworn to before me  
this 8th day of December 1997.



JESSE ALAN EPSTEIN  
Notary Public, State of New York  
No. 31-8194860

Qualified in New York County  
Commission Expires July 31, 1998 98



## La Gina d'Amérique rencontre la Marilyn d'Europe

DANS l'avion qui l'emmenait à New York, où elle allait présenter son dernier film *Pain, Amour et Fantaisie*, Gina Lollobrigida avait préparé les réponses aux questions rituelles des journalistes américains. On ne lui en posa qu'une, qu'elle n'avait pas prévue : « Que pensez-vous de Marilyn Monroe ? » Gina qui n'avait jamais rencontré sa rivale, répondit : « Elle a fait beaucoup de progrès. » Dès le lendemain elle est allée lui rendre visite dans la 52<sup>e</sup> Rue, où Marilyn tournait une scène d'extérieur de son film

*The Seven Year Itch*. Pour la voir, Gina s'est levée sans être reconnue une haie de 2.000 personnes. Elle admirait la vedette américaine, Marilyn, en train de danser dans le sous-sol d'un théâtre voisin, le Trans-Lux. Un instant, les deux « figures de proue » du cinéma se contemplèrent en silence. C'est la sympathie qui l'emporta. « Savez-vous, dit la blonde Marilyn, qu'on les surnomme la Lollobrigida d'Amérique ? — Justement, répondit la brune Gina, on m'appelle en Europe « l'autre Monroe » ».

Photo Nick de MORGOLI.

MMLLC (Shaw) 000615

Read Singer's  
Sport Chatter

# New York Post Sports

NEW YORK, MONDAY, MAY 13, 1957

Week Sports  
On Page 84

## Hurricane Has Just Gotta Eat

AL RUCK

Floyd Patterson today will be the day of an... maneuvering to get the... heavyweights... into ring has been... by Lippy Briedbart, manager of Tommy (Hurricane) Jackson, the No. 1 contender.

Patterson started back in January... reached a climax today... Jackson's ultimatum.

Patterson can't make up his mind, Jackson will sign for Eddie... either late in June, or in July," said Briedbart, "I have to eat, I have to eat."

Marlin International Boxing Association is ready to see Jackson fight... at... adding that one... not picked up a dollar... since last...

...relief his... out at Stillman's... I talked," said Briedbart... down with... in January. He... to promote a heavyweight... at Miami Beach in...

...said he didn't want... challenger in a... he... wanted... this year, one in June... in September. Nor... I said Jackson would...

...that was when... I... about... I know... on... I admit...

...not... when he... Patterson... in his... Patterson... Jackson beat him. He got... in outpunching... at Pittsburgh last...

...Georgia Jackson, Tom... about... I told her... her... purse... about \$20,000. With...

...thinking... wanted... the... I got a telephone... I... I... took my lawyer, Bert...

...Loren at his... establishment... about... industry... about...

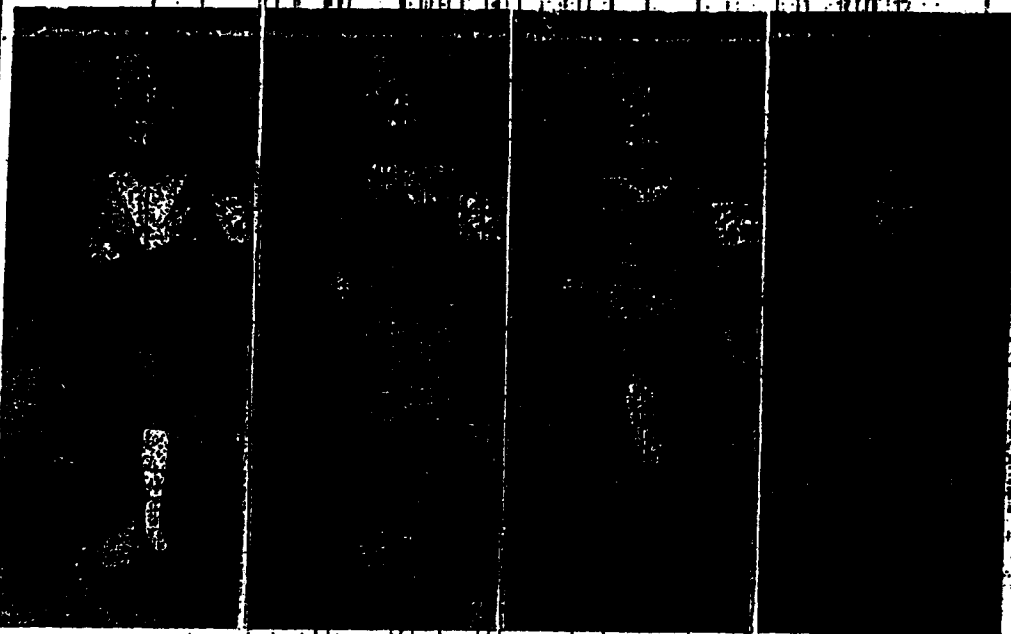
...Arch and fought the... fight. Finally, Clark... why he had sent...

...said it was about... fight. He said... Patterson, but...

...to his financial... Briedbart asked... he should say if Loren... statement indicating he...

...truth," answered the... Loren's... offered... and you look it."

## Soccer Was Never Like This



Marlyn Monroe gives fans a look at Eddie Mold yesterday as the team and American Soccer League (ASL) which featured a... kiks out first ball for game between Israel's Hapoel... Solo to Israel program. The Israel team won 3-1.

## Robinson Filling In for Klu As Reds' Big Man...In Big Way



FRANK ROBINSON

Robinson jugged out six hits for the day, adding 22 points to his bulging average.

Robinson's... day... 10-1. Hank Aaron... in both games, hitting his... total to... called the... day with a... 379... (over... third place, Bob... and Hank... are ahead of him.

Pittsburgh... ended its seven-game losing streak by... Philadelphia's... 6-1. In the second game... after... to... the... 5-2.

Larry... his... down here, and... hit one for Chicago... love... that...

White Sox a half-game in... of the Yankees... (Dwight... two-hit... in the... 10-6, the... had... for a split with Washington... when... who beat them six times last year, scattered seven... for a 6-2 triumph.

Virgil... consigned to the... many, popped up with his 11th straight victory for Kansas City, winning over Cleveland on... in the 5-2... owner with the help of a grand slam home by Hal Smith. Rocky... drove in four runs, three of them on a first-inning homer to give the Indians a split with a 7-1 second game... for re-

later... Three men won't forget May 12 for some time. Ed... infielder, got his first major league homer in the first game against Cincinnati and little Don... the Cardinals while... connected for his first in the second game against Milwaukee. Ar... 25-year-old White Sox rookie, won his first big league game with a fine relief job.

Doby's long... double... the White Sox, for the... is a... last... He had only one better in the Sox's first 20 games and went about two months before hitting his first last year. Yesterday's... gave Doby three for the year and a... 20 runs batted in and a... average.

In the National League... Milwaukee is... the league... with a... the... game. Chicago... Red... to be... the...

The... Dr. Thomas... about half the... of the eye and said it "looks good." However, he has lost half an opportunity to make a complete examination to determine whether permanent damage has been done to the eye.

The 21-year-old pitcher told Dr. Thomas Saturday that he could see better out of the eye than before.

The... Dr. Thomas referred to was caused by hemorrhaging. Score has been given medication to stimulate the absorption. His uninjured left eye also has been covered... of that eye would tend to... movement of the... the... the... to be... the...

## Score's Eye 'Much Better'

Cleveland, May 12 (AP)—An eye specialist says he is encouraged by the progress being made by Herb Score, Cleveland Indians pitcher who was hit in the right eye by a line drive.

"Herb is responding nicely to treatment and the eye is much better," Dr. Charles I. Thomas said yesterday following an inspection of the eye... southpaw's injury. "The blood clot is about half absorbed and the veil is gradually lifting. I'm very much encouraged about things."

Dr. Thomas was able to see about half the retina of the eye and said it "looks good." However, he has lost half an opportunity to make a complete examination to determine whether permanent damage has been done to the eye.

The 21-year-old pitcher told Dr. Thomas Saturday that he could see better out of the eye than before.

The... Dr. Thomas referred to was caused by hemorrhaging. Score has been given medication to stimulate the absorption. His uninjured left eye also has been covered... of that eye would tend to... movement of the... the... the... to be... the...

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MMLLC (Shaw) 000616

**Exhibit I**

**MMLLC (Shaw) 000617**

## SAM SHAW .v. RIZZOLI INTERNATIONAL PUBLICATIONS, INC.

1 de Dienes 25  
 2 Angeles Superior Court.  
 3 Q. Did you use a lawyer to represent  
 4 you?  
 5 A. Correct.  
 6 Q. What is his name and address?  
 7 A. David Mallen, M-a-l-l-e-n, Los  
 8 Angeles, California, just a second. 333 South  
 9 Rand, 33rd floor, that's Los Angeles,  
 10 California, 90071.  
 11 Q. What photos were involved in this  
 12 suit that led to a \$250,000 judgment?  
 13 A. Well, I'm not sure of the amount so  
 14 you might want to leave a blank because I'm  
 15 not sure.  
 16 Q. All right, I'll leave a blank.  
 17 (Insert.)  
 18 A. I don't want you to put an exact  
 19 amount if I'm not sure of the amount.  
 20 Q. What photos were involved in this  
 21 particular case?  
 22 A. Well, I can't tell you what photos,  
 23 my husband has such a large collection it  
 24 would be impossible for me to tell you the  
 25 images that were involved.  
 Elisa Dreier Reporting Corp., \* (212) 557-5558  
 230 Park Avenue, Suite 650, New York, NY 10169

1 de Dienes 26  
 2 Q. How many images were involved?  
 3 A. I don't know because Litwak and  
 4 Michaelson were two con artists and it's  
 5 really difficult to know -- to find out, as  
 6 you know, even getting into a lawsuit the  
 7 amount that was involved because the truth is  
 8 not always brought out.  
 9 Q. What had Michaelson and Litwak done,  
 10 had they published a book or something else?  
 11 A. Well, they tried to publish a book  
 12 and they licensed his images over television  
 13 and other avenues that I'm not even aware of.  
 14 They came out -- they held a big exhibit in  
 15 Las Vega at the Riviera Hotel. I don't know  
 16 how many images they used for that.  
 17 Q. Getting back to Edward Weston, what  
 18 did he do with your husband's images?  
 19 A. Well, he -- I can't discuss that  
 20 with you. I'm not even sure if I can discuss  
 21 any of that case with you, so I would have to  
 22 decline, and if you have any questions you  
 23 would have to call my attorney here in Los  
 24 Angeles because I'm not sure what I can  
 25 discuss and what I can't discuss.  
 Elisa Dreier Reporting Corp., \* (212) 557-5558  
 230 Park Avenue, Suite 650, New York, NY 10169

1 de Dienes 27  
 2 Q. Is that Mr. Mallen?  
 3 A. Correct.  
 4 Q. How about the Sports Times case, can  
 5 you discuss anything about Sports Times?  
 6 A. I'm not sure so rather than say  
 7 something I'm not supposed to, here, again, I  
 8 direct you to Mr. Mallen.  
 9 Q. All right. Let us turn in the red  
 10 book to page 26. Do you see page 26?  
 11 A. Yes.  
 12 Q. There are three covers on page 26,  
 13 are any of those pictures your husband's  
 14 pictures?  
 15 A. Yes.  
 16 Q. How many of them?  
 17 A. All three.  
 18 Q. Okay, let us start with the picture  
 19 on the cover that is a magazine that's called  
 20 Wereld-Kroniek, W-e-r-e-l-d K-r-o-n-i-e-k. Do  
 21 you see that picture?  
 22 A. Yes.  
 23 Q. It's Marilyn Monroe, looks like in  
 24 the middle of some snow.  
 25 A. Yes.  
 Elisa Dreier Reporting Corp., \* (212) 557-5558  
 230 Park Avenue, Suite 650, New York, NY 10169

1 de Dienes 28  
 2 Q. What were the circumstances  
 3 surrounding taking that picture?  
 4 A. That was part of their sojourn, I  
 5 think that was taken in Mount Hood, Oregon.  
 6 Q. What was the year it was taken?  
 7 A. 1945.  
 8 Q. Did your husband pay Marilyn Monroe  
 9 for her services as a model for the three  
 10 weeks of this sojourn?  
 11 A. Yes.  
 12 Q. How much did he pay her?  
 13 A. I don't know.  
 14 Q. Do you have any records from which  
 15 you can determine the answer to that question?  
 16 A. I say, I would have to check.  
 17 Q. All right, we'll leave a space.  
 18 (Insert.)  
 19 Q. When was this photo published for  
 20 the first time?  
 21 A. I don't know.  
 22 Q. Do you know if it was published for  
 23 the first time in Wereld-Kroniek Magazine in  
 24 1949?  
 25 A. Knowing Andre that would have been  
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 230 Park Avenue, Suite 650, New York, NY 10169

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## SAM SHAW .v. RIZZOLI INTERNATIONAL PUBLICATIONS, INC.

29

de Dienes

1 the first time but, here, again, I'm not sure.

2 Q. When you say "knowing Andre that  
3 would have been the first time," what do you  
4 know about his habits that cause you to  
5 conclude that that would have been the first  
6 time?

7 A. He was very protective of his  
8 photographs of Marilyn Monroe and the very --  
9 the few that he allowed people to use would  
10 have been in the early days, in the 1940s, and  
11 because later on he buried his negatives of  
12 her and they stayed buried for quite a few  
13 number of years and he just did not have her  
14 works published, very few of them.

15 Q. Was this photo, the snow scene, was  
16 it ever published anywhere else?

17 A. Prior to this date?

18 Q. Right.

19 A. Prior to this date, not to my  
20 knowledge.

21 Q. How about after this date?

22 A. After he --

23 Q. After it was published in this  
24 Wereld-Kroniek in 1949 was it ever published  
25 Elisa Dreier Reporting Corp., \* (212) 557-5558  
26 Park Avenue, Suite 650, New York, NY 10169

30

de Dienes

1 anywhere else?

2 A. Yes.

3 Q. Where else?

4 A. Marilyn Mon Amore.

5 Q. Anyplace else?

6 A. On a calendar in the United States  
7 and I know that for sure.

8 Q. When did that calendar come out?

9 A. Oh, that would have been a calendar  
10 that I had given the licensing rights to in  
11 1993. Excuse me, let me go back. This also  
12 could be one of the pictures that has appeared  
13 in other books after this. It could have been  
14 anywhere from 19 -- in the 1970s. There's a  
15 book that Norman Mailer wrote, but there was a  
16 number of his photos, a few that was published  
17 in that book, but --

18 Q. Did your husband get any money from  
19 the Norman Mailer book?

20 A. Yes.

21 Q. How much money did he get?

22 A. I don't know. Please keep in mind  
23 I'm not sure if these are one of the  
24 particular images that appeared in that book,  
25 Elisa Dreier Reporting Corp., \* (212) 557-5558  
26 Park Avenue, Suite 650, New York, NY 10169

31

de Dienes

1 but I know over the years it may have been one  
2 of the images that appeared in some of the  
3 other books that have been published on her.

4 Q. With respect to the calendar, how  
5 much money did you receive for allowing the  
6 Marilyn Monroe in the snow picture to be in  
7 the calendar?

8 A. I don't know. I'd have to go back  
9 to see.

10 Q. Let us leave a space and you can  
11 supply that when you read through your  
12 deposition.

13 (Insert.)

14 Q. Do you remember how much money you  
15 ever got for your Marilyn Monroe in the snow  
16 picture on any occasion or any money that your  
17 husband got on any occasion?

18 A. Let me just say that I never  
19 received, myself, any moneys for that  
20 particular picture alone for a single usage  
21 and at first what Andre received I do not  
22 know.

23 Q. Do you know what copyright notices  
24 were in the magazine Wereld-Kroniek?  
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26 230 Park Avenue, Suite 650, New York, NY 10169

32

de Dienes

1 A. No, I do not.

2 Q. Do you know if your husband put a  
3 copyright notice on the original photo before  
4 it was sent to Wereld-Kroniek?

5 A. I'm not sure.

6 Q. Do you still have the original photo  
7 in your possession?

8 A. Yes.

9 Q. Can you check to see if it has any  
10 copyright notice on it and advise us?

11 A. Yes.

12 (Insert.)

13 Q. Let us now go to Picture Post  
14 Magazine, which is also on the same page.  
15 When was that photo taken?

16 A. 1945.

17 Q. Was that taken during the same  
18 three-week trip?

19 A. Correct.

20 Q. When was the first time that photo  
21 was published?

22 A. I don't know.

23 Q. Could the first time have been on  
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## SAM SHAW .v. RIZZOLI INTERNATIONAL PUBLICATIONS, INC.

1 de Dienes  
2 a copy of it.  
3 And then you say these were postcards.  
4 A. No, collector cards.  
5 Q. What is a collector card?  
6 A. They're like baseball cards, you  
7 know, they collect them and trade them.  
8 People who are fans of hers.  
9 Q. Yes. So you don't remember how much  
10 money you earned from these collector cards?  
11 A. No, I recall that there was a  
12 \$20,000 advance payment but subsequently that  
13 company folded up and went bankrupt before the  
14 end of the contract.  
15 Q. Do you remember how many separate  
16 photos were used on these collector cards?  
17 A. No, I do not.  
18 Q. But you can check your records and  
19 if you have the answer to all of these  
20 questions you'll supply it, okay?  
21 A. Uh-huh, yes.  
22 (Insert.)  
23  
24 Q. We're now going to turn to page 28.  
25 Now, that is a photo that's from a magazine,  
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1 de Dienes  
2 Noir Et Blanc, N-o-i-r E-t B-l-a-n-c. Do you  
3 see that?  
4 A. Yes.  
5 Q. When was that photo taken?  
6 A. 1949, Jones Beach, New York.  
7 Q. Was that taken on the same day as  
8 the other Jones Beach photo?  
9 A. Yes.  
10 Q. So the circumstances involving the  
11 taking of those two Jones Beach photos were  
12 the same?  
13 A. Yes, same day.  
14 Q. When was this Noir Et Blanc photo  
15 published for the first time?  
16 A. I don't know, prior to this.  
17 Q. Could this have been the first  
18 publication of the photo?  
19 A. It could have been, but I'm not --  
20 I'm not sure.  
21 Q. Do you have any records from which  
22 you can check when the first publication of  
23 this photo occurred?  
24 A. I don't know, not prior to this.  
25 Q. Do you know if there was any  
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1 de Dienes  
2 copyright on this photo when it was presented  
3 for the publication?  
4 A. No, I do not.  
5 Q. Well, can you check if you have the  
6 original of the photo and advise us?  
7 A. Yes.  
8 (Insert.)  
9  
10 Q. Also do you know if Noir Et Blanc  
11 printed any copyright notices?  
12 A. I don't know.  
13 Q. Where else has this photo been  
14 published?  
15 A. I don't know, probably in some other  
16 books that they pirate -- you know, use them  
17 without permission.  
18 Q. Have you ever licensed this photo to  
19 be published by anybody?  
20 A. I'm not sure about this particular  
21 image.  
22 Q. Incidentally, with respect to all  
23 the photos that we've talked about so far,  
24 were any other photographers present when your  
25 husband was doing all of these photos?  
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1 de Dienes  
2 A. No, just Andre, Marilyn and his cat,  
3 CooCoo.  
4 Q. Let's turn to page 76. On page 76  
5 there is a reproduction of a Life Magazine  
6 cover, there is a reproduction of a page from  
7 Life Magazine and there is a reproduction of  
8 one of the Marilyn Monroe calendar pictures.  
9 Now, did your husband take any of these  
10 pictures?  
11 A. Yes, the one where she has the plaid  
12 slacks on, not the nude picture.  
13 Q. And not the Life Magazine picture  
14 either?  
15 A. Oh, no, not that one, no.  
16 Q. When did your husband take the  
17 picture of Marilyn with the plaid pants?  
18 A. Either '52 or '53, I'm -- I'm not  
19 sure.  
20 Q. What were the circumstances?  
21 A. I'm not sure on that one.  
22 Q. Was that picture taken on the same  
23 day as any of the other pictures we've talked  
24 about?  
25 A. It could have been -- I don't know,  
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## SAM SHAW .v. RIZZOLI INTERNATIONAL PUBLICATIONS, INC.

49

1 de Dienes  
 2 I'm not sure.  
 3 Q. For example, the inside front cover  
 4 picture you said was 1952?  
 5 A. Uh-huh.  
 6 Q. Could this picture have been done  
 7 that day also?  
 8 A. I don't know if it was done that  
 9 day. Excuse me, could I go back to page, the  
 10 last page we were on Jones Beach, 28?  
 11 Q. Yes, let's go back to 28.  
 12 A. I just wanted to make a note that  
 13 that picture also did appear in Marilyn Mon  
 14 Amore.  
 15 Q. Okay, I appreciate it.  
 16 MR. EPSTEIN: In fact, Mr. Shaw has found  
 17 it in Marilyn Mon Amore, so for the record  
 18 we're going to say what page it is. First we  
 19 have the find the page. Not all the pages are  
 20 numbered. It looks like page 98. And  
 21 Mr. Weinograd wants to know what page it is in  
 22 the Rizzoli book.  
 23 MR. SHAW: 28.  
 24 MR. EPSTEIN: It's 28 in the Rizzoli book.  
 25 Q. All right, so, now, back to Marilyn  
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50

1 de Dienes  
 2 in the plaid pants on page 76.  
 3 A. Yes.  
 4 Q. Where was that taken?  
 5 A. I also think -- I think that was  
 6 also taken in Bel Air.  
 7 Q. Was that in some -- in her house?  
 8 A. Apartment.  
 9 Q. Do you know how many photos your  
 10 husband took on that particular day?  
 11 A. No, I do not.  
 12 Q. Do you have, like, the negatives  
 13 from that day?  
 14 A. I'm sorry.  
 15 Q. Do you have, like, a set of the  
 16 photos that he took that day in your  
 17 possession?  
 18 A. I have some, I don't -- I have some,  
 19 yes.  
 20 Q. Was this Life Magazine the first  
 21 time that the page 76 photo was published?  
 22 A. Was that Life Magazine?  
 23 Q. Well, the caption -- well, I can ask  
 24 that. The caption of the Rizzoli book  
 25 is Life.  
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51

1 de Dienes  
 2 A. But that's not his picture where it  
 3 says Life on it.  
 4 Q. Take a look again, both pages seem  
 5 to be from Life Magazine.  
 6 A. Right, okay, okay.  
 7 Q. So was that publication in the Life  
 8 Magazine the first publication of the Marilyn  
 9 with the plaid pants?  
 10 A. To my knowledge it would have been.  
 11 Q. Did your husband get paid for the  
 12 publication of that photo by Life Magazine?  
 13 A. I don't know.  
 14 Q. Did Life Magazine acquire all future  
 15 rights to that photo when they published it?  
 16 A. No.  
 17 Q. How do you know?  
 18 A. Knowing Andre he would never have  
 19 given that permission to anyone. Anyone.  
 20 Q. Were there any copyright notices in  
 21 Life Magazine with respect to this photo?  
 22 A. I don't know.  
 23 Q. Do you know what copyright notices  
 24 Andre put on the photo before he sent it to  
 25 Life Magazine?  
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52

1 de Dienes  
 2 A. No, I do not.  
 3 Q. If you can determine that from  
 4 looking at the original of the photo in your  
 5 possession, please advise us.  
 6 A. Okay.  
 7 (Insert.)  
 8  
 9 Q. Mr. Shaw has found on page 116, 117  
 10 of Marilyn Mon Amore another picture of  
 11 Marilyn in the plaid pants. It's hard to say  
 12 if it's the same or a little different. Do  
 13 you have any familiarity with that picture?  
 14 A. Yes.  
 15 Q. Is that the same picture or a  
 16 different pose at the same time?  
 17 A. Well, it was taken the same day that  
 18 the page 76 was taken.  
 19 Q. I see.  
 20 A. I'm not sure. It looks like the  
 21 same image, but...  
 22 Q. Mr. Shaw is telling me to him it  
 23 looks a little different, okay, but we can  
 24 examine it further. So then getting back to  
 25 the page 76 --  
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MMLLC (Shaw) 000621

## SAM SHAW .v. RIZZOLI INTERNATIONAL PUBLICATIONS, INC.

1 de Dienes  
2 picture did, but, however, I'd have to flip  
3 through the book. I don't recall that, it  
4 could have but I can take a look.  
5 Q. Well, you don't have to do it, we'll  
6 do it as we go along. Mr. Shaw will look.  
7 A. I don't remember that particular  
8 image.  
9 Q. Is it possible that the camera  
10 company bought all of the rights to reproduce  
11 this photo in the future?  
12 A. No, no, never.  
13 Q. Let us go to page 113 in the Rizzoli  
14 book. It has several pictures of people,  
15 women mainly.  
16 A. The one on the right with the  
17 bathing suit, white bathing suit, and her hair  
18 is up and it says "Crema" behind it.  
19 Q. That's the only one on that page  
20 that your husband took?  
21 A. Yes.  
22 Q. When did he take that photo?  
23 A. I believe the year was 1946.  
24 Q. Was that taken during the same time  
25 as any of the other photos that we've talked  
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1 de Dienes  
2 about?  
3 A. No, it was a different time period.  
4 Different day, different month.  
5 Q. What were the circumstances involved  
6 with taking that photo?  
7 A. Well, she and Andre had a rather  
8 unique relationship. Just to preface, some of  
9 the answers basically are the same that I'm  
10 going to give you on this one. She called him  
11 up and she had just changed her name to  
12 Marilyn Monroe and they had kept in touch for  
13 over 16 years and she had called up and said  
14 she was celebrating the changing of her name  
15 to Marilyn Monroe and went on a little trip to  
16 San Juan Capistrano and that was the occasion  
17 it was taken, that led to the occasion.  
18 Q. Do you know how many pictures your  
19 husband took on that occasion?  
20 A. No, I do not.  
21 Q. Did he pay Marilyn Monroe for these  
22 pictures?  
23 A. I don't know.  
24 Q. In fact, did he pay her for any of  
25 pictures?  
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1 de Dienes  
2 A. Oh, yes.  
3 Q. Which pictures did he pay her for?  
4 A. I don't know. I have thousands in  
5 his collection. It's difficult for me to give  
6 you an answer on that.  
7 Q. Why don't we leave a space just with  
8 respect to the pictures in the Rizzoli book,  
9 if there's any information that you have about  
10 which ones your husband paid Marilyn Monroe  
11 for and if you have any information about how  
12 much money she was paid, I'd appreciate if you  
13 would just fill that in.  
14 A. Okay.  
15 (Insert.)  
16  
17  
18 Q. Getting back to the picture on page  
19 113 of the Rizzoli book, when for the first  
20 time was that picture published?  
21 A. I don't -- to my knowledge it would  
22 be whatever this magazine here we're looking  
23 at, the page from it.  
24 Q. You mean it was first published in  
25 this ad?  
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1 de Dienes  
2 A. Right.  
3 Q. How much money did your husband get  
4 for giving the right to use this photo in this  
5 ad?  
6 A. I don't know.  
7 Q. Do you have any record from which  
8 you could determine that?  
9 A. No, none, no.  
10 Q. Do you know when this ad was first  
11 published?  
12 A. I do not. From the looks of it it  
13 looks like it would in the 40s.  
14 Q. Did the photo have a copyright  
15 notice on it when it was given to the  
16 advertiser?  
17 A. I don't know.  
18 Q. And if you have the original of this  
19 photo I'd like you to check as to whether it  
20 had a copyright notice on it.  
21 A. Okay.  
22 (Insert.)  
23  
24 Q. Do you know if there was any  
25 copyright notice on the ad?  
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MMLLC (Shaw) 000622

# MARILYN MONROE

**Pink-ups**

MMLLC (Shaw) 000623

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
SAM SHAW et al.,

Plaintiffs,

-against-

96 Civ. 4259 (JGK)

RIZZOLI INTERNATIONAL  
PUBLICATIONS, INC., et al.

Defendants.

RULE 56.1 STATEMENT  
OF MATERIAL FACTS

-----  
RIZZOLI INTERNATIONAL  
PUBLICATIONS, INC., et. ano

Third Party Plaintiffs,

-against-

VALPA, SRL

Third Party Defendant.  
----- X

Pursuant to Local Rule 56.1, defendants Rizzoli International Publications, Inc. and RCS Libri & Grandi Opere SpA (collectively "Rizzoli") submit the following statement of material facts as to which there is no genuine issue to be tried.

1. Pool 4 Art World SRL ("Pool 4") created an exhibition of Marilyn Monroe photographs and memorabilia and obtained for use therein the photographs and other images which are the subject of this lawsuit. (Polito Aff. ¶4).

2. Pool 4 contracted with RCS Libri & Grandi Opere SpA to publish *Marilyn Monroe, The Life. The Myth.* a catalogue of the exhibition (the "Rizzoli Catalogue"). (Polito Aff. Ex. A). This action seeks damages for copyright infringement and related claims arising out of publication in 1995 and 1996 in Italy and the United States of the Rizzoli Catalogue. (Polito Aff ¶2.)

3. Marilyn Monroe died in August, 1962. (Polito Aff. ¶5).

4. The photographs that are the subject of this lawsuit were created prior to Ms. Monroe's death. (*Id.*).

5. The following paragraphs numbered 6 to 59 list 95 photographs which are the subject of this lawsuit, indicating for each photograph the name of the plaintiff, the page of the Rizzoli Catalogue (Exhibit A) on which the photograph or photographs appear, the name of the periodical in which the photograph appears, and a publication date for the photograph prior to January 1, 1964 (the "Public Domain Photographs").

	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
	<u>Sam Shaw</u>			
6.	146-147	8	"Le Ore"	S. Shaw testified <sup>1</sup> that the photographs on pp. 146-147 and 149 of the Catalogue were published in 1954, the day after they were taken. (Shaw p.76, Ex. G).

<sup>1</sup> The relevant pages of the deposition of Sam Shaw are annexed to the affidavit of Antonio Polito as Exhibit G.

	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
7.	147	1	"Se"	The photograph was published on the cover of a magazine "Se" which states the publication date as October 1-7, 1954. See also, Shaw p. 76 Ex. G.
8.	147	1	"Cahiers du Cinema"	S. Shaw testified that the photographs on pp. 146-147 and 149 of the Catalogue were published in 1954, the day after they were taken. (Shaw p.76, Ex. G).
9.	148	1	"Paris-Match"	Annexed hereto, as Exhibit H, is a copy of the page on which the photograph appeared in an October, 1954 "Paris-Match" magazine, which was made from microfilm belonging to the New York Public Research Library at 42nd Street. The facts regarding the copying of this microfilm are contained in the affidavit of Kenneth Hicks, also attached as Ex. H.
10.	149	1	"Visioni"	The photograph was published on the cover of a magazine, "Visioni", which states the publication date as May 14, 1955. See also Shaw p. 76, Ex. G.
11.	184	3	"Le Ore"	The identical photographs were published in the "New York Post" on May 13, 1957. A copy of the relevant page is annexed as part of Exhibit H.

Shirley de Dienes

12.	25	1	"Family Circle"	The photograph was published on the cover of a magazine, "Family Circle", which states the publication date as April 26, 1946.
13.	25	1	"Votre Amie"	The photograph was published on the cover of a magazine "Votre Amie", which states the publication date as September 3, 1946.

	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
14.	26	1	"Wereld Kroniek"	Shirley de Dienes <sup>2</sup> testified that the photograph was published for the first time in 1949. De Dienes pp. 28-29, Ex. I.
15.	26	1	"Pageant"	The photograph was published on the cover of a magazine, "Pageant", which was published in June 1946, according to a book published by the plaintiff, Quon Editions, p. 110, entitled <i>Marilyn Monroe uncovers</i> . Copies of the relevant pages of the Quon Editions book are annexed hereto as Exhibit N.
16.	26	1	"Picture Post"	The photograph was published on the cover of a magazine, "Picture Post", which states the publication date as December 13, 1947.
17.	27	1	"Picture Post"	The photograph was published on the cover of a magazine, "Picture Post", which states the publication date as March 26, 1949.
18.	27	1	"Sunbathing Review"	The photograph was published on the cover of a magazine, "Sunbathing Review", which states the publication date as Fall 1958.
19.	28	1	"Noir Et Blanc"	The photograph was published on the cover of a magazine, "Noir et Blanc," which states the publication date as July 16, 1952.
20.	76	1	"Life"	De Dienes testified that the photograph was published in the April 7, 1952 "Life" magazine. (De Dienes, pp. 48-51, Ex. I).
21.	107	8	"Marilyn Monroe Pin-ups"	Copies of the cover page, Copyright page and the pages of the 1953 "Marilyn Monroe Pin-ups" magazine are annexed

<sup>2</sup> The relevant pages of the deposition of Shirley De Dienes are annexed to the Polito Affidavit as Exhibit I.

	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
				hereto as part of Ex. I following the pages of De Dienes deposition.
22.	112	1	[Advertisement]	De Dienes testified that the photograph was published for the first time in the 1940's (De Dienes pp. 48-51, Ex. I).
23.	113	1	[Advertisement]	De Dienes testified that the photograph was published for the first time in the 1940's. (De Dienes pp. 67-68, Exh. I)
24.	118	2	[Unknown]	The photographs which are claimed to be protected by the copyright law were published in a magazine spread which was reproduced in the Rizzoli Catalogue. The captions accompanying the photographs refer to Ms. Monroe in the present tense and thus demonstrate that the magazine article and the photographs were published in her lifetime, and before January 1, 1964.

Milton Greene

25.	92	1	"Mujer"	The photograph was published on the cover of a magazine, "Mujer," which states the publication date as February 1962. <i>See also</i> J. Greene <sup>3</sup> pp. 153-154 Ex. J.
26.	92	1	"Se"	The photograph was published on the cover of a magazine "Se", which states the publication date as October 18, 1957; <i>See also</i> J. Greene pp. 153-154, Ex. J.
27.	108	1	"Tempo"	The photograph was published on the cover of a magazine, "Tempo", which states the publication date as November 26, 1953.

<sup>3</sup> The relevant pages of the deposition of Joshua Greene, the son of Milton Greene, are annexed to the Polito Affidavit as Exhibit J.



	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
28.	108-09	10	"Look"	Annexed hereto as Exhibit K are the cover page, copyright page, credits page, and the pages on which the photographs appeared in the November 17, 1953 "Look" magazine.
29.	167	1	"Look"	The photograph was published on the cover of a magazine, "Look", which states the publication date as May 29, 1956.
30.	168	1	"Cine Review"	The photograph was published on the cover of a magazine "Cine Review", which states the publication date as July 20, 1956. <i>See also</i> J. Greene p. 165, Ex. J.
31.	171	1	"Elle"	The photograph was published on the cover of a magazine, "Elle", which states the publication date as July 26, 1956. <i>See also</i> J. Greene, pp. 172. Ex. J.
32.	182	2	[Japanese Poster]	J. Greene testified that the photograph was published in 1957 (J. Greene pp. 183-184, Ex. J).
33.	187	1	"Life" (Int. Ed.)	The photograph was published on the cover of a magazine, "Life", International Edition, which states the publication date as July 8, 1957. <i>See also</i> J. Greene, pp. 186-87, Ex. J.
<b><u>Phil Stern</u></b>				
34.	196	1	"Jours de France"	Phil Stern testified <sup>4</sup> that the photograph was published in the March 14, 1959 "Jours de France" and earlier in "Look" magazine. Stern pp. 27-29, Ex. L.

<sup>4</sup> The relevant pages of the deposition of Phil Stern are annexed to the Polito Affidavit as Ex. L.

**Page From Rizzoli  
Catalogue, Polito Aff.  
Ex. A**

**Number of  
Photos**

**Name of Periodical**

**Evidence From Record Demonstrating  
Publication Date before January 1,  
1964**

**Roy Schatt**

35.	159	5	"Modern Screen"	Copies of the cover page, credits page and the pages of the October 1955 "Modern Screen" magazine where these photos appeared are annexed hereto as Exhibit P.
-----	-----	---	-----------------	--

**Henri Dauman**

36.	198-99	2	"Jours de France"	Henri Dauman <sup>5</sup> testified that the photographs were published in 1959. H. Dauman pp. 16-19, Ex. M.
-----	--------	---	-------------------	--

**Quon Editions**

37.	25	1	"Family Circle"	The photograph was published on the cover of a magazine, "Family Circle", which states the publication date as April 26, 1946 (Quon's claim is barred by de Dienes' copyright claim for the same photographs, <i>see</i> pp. 5-6, above).
38.	26	1	"Pageant"	The photograph was published on the cover of a magazine "Pageant", which was published in June 1946 according to Quon. Ex. N. p. 110. (Quon's claim is barred by de Dienes' copyright claim for the same photographs, <i>see</i> pp. 5-6, above).

<sup>5</sup> The relevant pages of the deposition of Henri Dauman are annexed to the Polito Affidavit as Ex. M.

	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
39.	26	1	"Picture Post"	The photograph was published on the cover of a magazine, "Picture Post", which states the publication date as December 13, 1947. (Quon's claim is barred by de Dienes' copyright claim for the same photograph, <i>see</i> pp. 5-6, above).
40.	27	1	"Picture Post"	The photograph was published on the cover of a magazine, "Picture Post", which states the publication date as March 26, 1949. (Quon's claim is barred by de Dienes' copyright claim for the same photograph, <i>see</i> pp. 5-6, above).
41.	28	1	"Noir et Blanc"	The photograph was published on the cover of a magazine, "Noir et Blanc", which states the publication date as July 16, 1952. (Quon's claim is barred by de Dienes' copyright claim for the same photograph, <i>see</i> pp. 5-6, above).
42.	27	1	"Sunbathing Review"	The photograph was published on the cover of a magazine, "Sunbathing Review", which states the publication date as Fall 1958. (Quon's claim is barred by de Dienes' copyright claim for the same photograph, <i>see</i> pp. 5-6, above).
43.	30	1	"Laff"	The photograph was published on the cover of a magazine, "Laff", which was published in June 1946, according to Quon. Ex. N. p. 96.
44.	30	1	"Personal Romances"	The photograph was published on the cover of a magazine, "Personal Romances," which was published in June 1947, according to Quon. Ex. N. p. 86-87.
45.	30	1	"True Experiences"	The photograph was published on the cover of a magazine, "True Experiences," which was published in September 1947, according to Quon. Ex.

	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
				N. p. 21.
46.	31	1	"Laff"	The photograph was published on the cover of a magazine, "Laff," which was published in August 1946, according to Quon. Ex. N. p. 94.
47.	33	1	"Laff"	The photograph was published on the cover of a magazine, "Laff," which was published in January 1947, according to Quon. Ex. N. p. 94.
48.	33	1	"Laff"	The photograph was published on the cover of a magazine, "Laff," which was published in September 1947, according to Quon. Ex. N. pp. 112-113).
49.	35	1	"Follie"	The photograph was published on the cover of a magazine, "Follie", which states the publication date as March, 1953.
50.	37	1	"Imágenes"	The photograph was published on the cover of a magazine, "Imágenes," which was published in April 1953, according to Quon. Ex. N. pp. 46-47.
51.	37	1	"Garbo"	The photograph was published on the cover of a magazine "Garbo", which states the publication date as October 1953.
52.	37	1	"Cinemonde"	The photograph was published on the cover of a magazine, "Cinemonde," which was published in September 1947, according to Quon. Ex. N. p. 94.
53.	47	1	"True Experiences"	The photograph was published on the cover of a magazine, "True Experiences," which was published in May 1950, according to Quon. Ex. N. p. 24.

	Page From Rizzoli Catalogue, Polito Aff. Ex. A	Number of Photos	Name of Periodical	Evidence From Record Demonstrating Publication Date before January 1, 1964
54.	57	1	"Mi Vida"	The photograph was published on the cover of a magazine, "Mi Vida," which was published in August 1962, according to Quon. Ex. N. p. 70.
55.	128	1	"Tempo"	The photograph was published on the cover of a magazine "Tempo", which states the publication date as November 4, 1958.
56.	128	1	"Movieland"	The photograph was published on the cover of a magazine "Movieland", which states the publication date as 1954.
57.	171	1	"Elle"	The photograph was published on the cover of a magazine "Elle", which states the publication date as July 26, 1956. (Quon's claim is barred by Green's Copyright claim for the same photograph, see p. 7, above).
58.	171	1	"Time"	The photograph was published on the cover of a magazine "Time", which states the publication date as May 14, 1956.
59.	207	1	"Hayat"	The photograph was published on the cover of a magazine "Hayat", which states the publication date as August 24, 1961.
<b>Bert Stern</b>				
60.	216	16	"Eros"	Copies of the cover page of Eros Magazine and the table of contents page indicating publication in Autumn, 1962 are annexed as Ex. O.

61. As part of the Rizzoli's discovery, Rizzoli requested that plaintiffs produce copies of all copyright renewals regarding the photographs that are subject of this lawsuit. (Second Demand for Documents, items #1, #2, #3 and #4a, Polito Aff. Exhibit E).

62. The plaintiffs have not produced any Copyright renewals applicable to the Public Domain Photographs. (Polito Aff. ¶8).

63. The defendants also employed Thomson & Thomson, a copyright search firm, to search under the name of each plaintiff for all copyright registrations and renewals. The result of that search was that there were no renewals by or in the names of the above-listed plaintiffs of any of the copyrights of the Public Domain Photographs. (Polito Aff. Exhibit F).

64. George Barris agreed to loan his 15 Marilyn Monroe photographs (Polito Aff. Ex. A, pp. 278-285) to defendant Pool 4 for use in their Italian exhibition about Ms. Monroe. (Barris Dep. pp. 11-20, Polito Aff. Ex. Q).

65. As part of his agreement, he *twice* executed, a "loan form" (Polito Aff. Ex. R) which stated as follows:

"The lender authorizes his work to be reproduced - also in colours - either in the catalogue or in any other publication...."

costumes appearing on pages 294 and 296 of the Rizzoli Catalogue and the 6 photographs appearing on page 297 were reproduced without permission.

67. Sarris executed three copies of the loan forms, all of which contained the language of consent to publication quoted in paragraph 65, *supra*. (Polito Aff. Ex. S). *See also* Sarris Dep. pp. 19-23, Polito Aff. Ex. T hereto.

68. Mickey Pederson a/k/a Mickey Song ("Song") has one photograph in the Rizzoli Catalogue, on page 310, a portion of which also appears on page 223. (Polito Aff. ¶14, Ex. A). Song signed a loan form with the same language of consent to publication quoted in paragraph 65, *supra* (Polito Aff. Exh. U). *See also* Song Dep. pp. 12-18, Polito Aff. Ex. V.

69. Quon Editions, Inc. obtained non-exclusive licenses to reproduce the works which are the subject of its claims. (Polito Aff. Exhibit N.)

70. Messrs. Shaw, Barris and Sarris did not create eight of the photographs which are the subject of their infringement claims. These photographs appear on (a) page 248 of the Rizzoli Catalogue (Shaw) (1 photo), (b) page 278 of the Rizzoli Catalogue (Barris) (one photo) and (c) page 297 of the Rizzoli Catalogue (Sarris) (six photos). (Polito Aff. Ex. A pp. 248, 278 and 297.). These plaintiffs could not identify or produce any writing assigning or otherwise transferring to them the copyrights with respect to those photographs. (Shaw Dep. pp. 117-119, Polito Aff. Ex. G; Barris Dep. pp. 28-29, Polito Aff. Ex. Q; Sarris Dep. pp. 63-69, Polito Aff. Ex. T.)

71. Messrs. Shaw, Barris and Sarris could not identify who had the copyright or any reproduction rights for the subject pictures. (*Id.*).

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**Exhibit A**

**MMLC (Shaw) 000646**

**Exhibit A, the Rizzoli Catalogue,  
is being submitted separately**

**Exhibit B**

**MMLLC (Shaw) 000648**